

STATE OF WISCONSIN  
DEPARTMENT OF COMMERCE

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*In the matter of the PECFA Appeal of:*

Betty Henningfeld  
Formerly d/b/a Phillips Spur Station  
W8079 US Hwy 2 #49  
Iron Mountain, WI 49801

PECFA Claim # 54555-9702-92  
Hearing # 01-281

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**INTERLOCUTORY RULING**

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The Department of Commerce has moved for the dismissal of the Claimant's appeal on the grounds that the appeal was untimely.

**DISCUSSION**

By a decision dated June 25, 2001, the Department of Commerce ("Department") denied \$286,201.14 in reimbursement for a PECFA claim submitted by the Claimant. The Claimant's consultant faxed an appeal to the Department on July 25, 2001, which was received by the Department at 2:34 p.m. The appeal was unsigned. However, the cover letter of the appeal specifically advised that the Claimant had requested that the consultant fax the appeal. Moreover, the appeal, although not signed by the Claimant, was nevertheless authorized by the Claimant as evidenced by the closing line of the appeal giving the Claimant's name and designation as the "responsible party." The Department received the appeal, contacted the Claimant, and advised that the appeal was not acceptable given that it was unsigned. The Claimant faxed the Department a signed appeal, which was received by the Department at 4:56 p.m.

The Department argues that the appeal is untimely because a "signed" appeal letter was not received by the Department before 4:30 p.m. on July 25, 2001 and because the Claimant's consultant has no standing to submit an appeal on behalf of the Claimant. For the following reasons, the Department's motion is denied.

Wisconsin Stat. § 101.02(6)(f) requires that appeals be verified. However, the applicable statutes do not define "verified." Black's Law Dictionary defines "verified" as "to confirm or substantiate by oath or affidavit . . . to confirm or establish the truth." Black's Law Dictionary does not define "verify" as requiring a signature--although the Department has argued that the common understanding of "verified" requires a signature. Absent a specific statute or rule requiring a signature on a PECFA appeal, this tribunal will not read into Wis. Stat. § 101.02(6)(f) a requirement that is not there. If the legislature wanted to require a signature, then the legislature could have specified such a requirement. It did not. Moreover, the actual appeal received prior to 4:30 p.m. was a detailed, comprehensive appeal submitted by the Claimant's agent on behalf of the Claimant. The Claimant authorized the appeal. Such an authorization "confirmed and established" the truth of the appeal. In addition, this tribunal finds credible the Claimant's assertion that the Department has accepted similar appeals in the past without contesting whether or not they were timely. Finally, nothing in the Department's mailings to the Claimant advised that an appeal must be signed. If the Department read such a requirement into the statutes, the Department should have so notified the Claimant. It did not.

This tribunal also finds unpersuasive the Department's argument that the appeal was untimely given that the Claimant's consultant had no standing to submit the appeal. The consultant acted as the agent of the Claimant

with the Claimant's clear permission to do so. Agents act for their principals. The agent's acts are imputed to the principal. This is standard agency/principal law. The appeal letter was prepared by the consultant on behalf of the Claimant. The appeal letter clearly stated that it was being issued by the Claimant as the Claimant's name and authority to appeal completed the appeal letter. The fact that the consultant faxed the appeal does not change the fact that the appeal was issued on behalf of the Claimant-- and as such, by the Claimant. Accordingly, this tribunal finds that the Claimant issued the appeal, albeit unsigned, prior to the 30-day deadline. This was not an appeal submitted by a consultant acting alone--something that is prohibited by the applicable law. See Wis. Stat. § 1014.02(6)(e).

Accordingly, the faxed, albeit unsigned appeal received by the Department on July 25, 2001, at approximately 2:34 p.m. was timely.

### ORDER

The Department of Commerce's Motion to Dismiss is denied. This matter will proceed to hearing unless otherwise disposed of.

Dated and mailed this 14<sup>th</sup> day of January 2002.

Mailed to:

Betty Henningfeld  
d/b/a Phillips Spur Station

David P. Ruetz  
Whyte Hirschboeck Dudek S.C.  
John A. Kisiel  
Department of Commerce

BY: Gretchen Mrozinski

Administrative Law Judge  
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